

1 spaced sites do not exist, and they haven't made that claim.
2 And that's their -- that may be their obligation in order to
3 justify a waiver. We'll have to make a decision on --

4 JUDGE CHACHKIN: Let, let's --

5 MR. ZAUNER: -- that before --

6 JUDGE CHACHKIN: -- let's find out. Is that --

7 MR. ZAUNER: -- coming to a conclusion.

8 JUDGE CHACHKIN: -- correct, that you're not claim-
9 ing that there are no fully spaced sites?

10 MR. COHEN: That's correct. In our direct case, our
11 client's direct case, Your Honor, there's no representation
12 made, Mr. Zauner's quite right, there's no representation made
13 that a fully spaced site is not available. There's nothing
14 said about a fully spaced site. There's going to be the
15 argument of Glendale. We think the precedent is, is with us
16 on this, is that there's no obligation on Glendale's part to
17 make that kind of a showing. And, so, I agree with my friend
18 Mr. Zauner, that we, we make no claims along those lines, and
19 so I don't think this is appropriate.

20 JUDGE CHACHKIN: Well, they have the burden of
21 proceeding and they're, they're not making that claim, that
22 there aren't fully spaced sites available. And what's the
23 purpose of showing that there is a fully spaced site?

24 MR. MAY: There, there's two reasons for it, Your
25 Honor. First, to, to note that in past evaluations, when you

1 get through -- there are three general criteria looked at for,
2 for granting a waiver of a, of a shortspacing situation, a
3 waiver of the spacing rules. First is you have to show that a
4 site is no longer available or suitable for the particular use
5 that it has.

6 JUDGE CHACHKIN: And they're not making an
7 argument --

8 MR. MAY: Well, I know, but, but they're, they're --

9 JUDGE CHACHKIN: -- that there aren't sites
10 available.

11 MR. MAY: The next is then that, that as a threshold
12 matter there are no fully spaced sites available. They are
13 stipulating and saying here that they don't meet that
14 threshold requirement. They think for other reasons as a
15 matter of law they don't have to meet it, meet it, but never-
16 theless they've, they've admitted that they don't meet that
17 threshold requirement.

18 The third area is then for the Agency to evaluate
19 approximately six or seven what might be described as a basket
20 of public interest considerations. When the Agency evaluates
21 this basket of public considerations, and that is the reason
22 we thought Mullaney's exhibit might be helpful -- first,
23 that's Glendale Exhibit 5 -- they do provide certain arguments
24 which they believe support their waiver of the shortspacing
25 rule, among them equivalent protection, availability for sites

1 to still be had against the Channel 63 vacant facility --
2 excuse me -- allocation in Montgomery, and other things. It
3 is against that third criteria of the public interest evaluat-
4 ing factors which they want to argue support their claim for a
5 waiver that we show that indeed there is a fully spaced site.
6 And one of the cases that we cited in some of the moving
7 papers earlier on by Glendale was the Sarks (phonetic sp.) --
8 I want to say this name right. I always want to say --

9 JUDGE CHACHKIN: Tarzian (phonetic sp.).

10 MR. MAY: -- Tarzan, but it's Tarzian.

11 JUDGE CHACHKIN: I thought it was Tarzian.

12 MR. MAY: Yes. It's Sarks Tarzian. They, they
13 essentially argued that that case was an instance in which the
14 Commission went to the -- shall we say the basket of public
15 interest considerations in making decisions as to whether or
16 not a shortspacing waiver would be granted. However, I would
17 note in that matter that the Agency in its consideration of
18 the six public interest criteria specifically noted that while
19 there was a fully-spaced site, one McClellan peak site -- I'm
20 reading now from paragraph three of the Commission's decision
21 at 69 R 2nd 157 -- they note that this would be a fully spaced
22 site, but from that site they could not provide the increase
23 of service first, network service and, and first service into
24 the state capital.

25 My, my point is is that you have to be able to look

1 at the circumstances in each particular instance when you look
2 at the public interest criteria. One of the factors is this
3 tradeoff against what sites are in fact meeting the full-
4 spacing requirement and then comparing that with whether or
5 not the other factors that they're suggesting support the
6 waiver. So, if you can show there's a fully spaced site and
7 from that fully spaced site the criteria they say supports
8 their waiver, for example, equivalent protection, well, the
9 equivalent protection argument falls away because here's a
10 fully spaced site that you could operate from from which that
11 argument would no longer be relevant.

12 And that is why in spite of the fact that they're
13 conceding they didn't meet the threshold requirement of no
14 fully spaced sites or even investigating that, that threshold
15 requirement, that Mr. Mullinax in the availability of the WFOX
16 site is in fact important for both the trier of fact and trier
17 of law to look at and to be aware so we develop a full record
18 as to the circumstances in this case.

19 JUDGE CHACHKIN: Well, they may get into the argu-
20 ment that, that there is no site from which they could serve
21 additional people or white area or anything like -- else --
22 are, are they making that argument?

23 MR. MAY: No. They, they make the -- the claims
24 that they make are that, from a public interest standpoint,
25 operating from where they propose to operate, which is a

1 greater shortspaced site than the incumbent has, they will
2 provide equivalent protection. They -- there are still, there
3 are still an area of approximately -- I believe it's 500
4 square kilometers or 500 kilometers in which a fully spaced
5 proposal for the Channel 63 in Montgomery could be located.
6 And, and in, in -- in substance, that's really it.

7 They make some procedural arguments as to why they
8 didn't try to pursue any other sites and they indicate that
9 the FAA was a problem and the timing of the FAA and the like.
10 But in terms of the public interest criteria they look at
11 after you get through the, the, the threshold requirement,
12 those are the only criteria they provided.

13 JUDGE CHACHKIN: Well, but are you rebutting any of
14 their arguments here by saying that there's a site available?

15 MR. MAY: We're saying that their support that they
16 would provide equivalent protection is irrelevant in this
17 instance because there's a fully spaced site and here it is
18 that you could operate from. Now, the irony is, Your Honor,
19 that if --

20 JUDGE CHACHKIN: But you're not rebutting any of
21 their contentions, are you? All you're doing is having a
22 statement that here's a site somewhere which is fully spaced,
23 but it doesn't rebut any of their arguments.

24 MR. MAY: It puts their argument in, in context as
25 to the circumstances in this case. You could make a -- you

1 can make a series of arguments, but if the facts and circum-
2 stances in the case don't support those arguments then you're
3 not -- I mean, they are of no weight. So, the facts and
4 circumstances here have to take into consideration the fact
5 that WFOX, a fully spaced site, is available.

6 I was going to mention that the irony is is that had
7 they investigated the WFOX site, when we get to it the
8 testimony of Mr. Fisher shows that it not only meets the
9 requirements for full spacing and city grade service into
10 Monroe, but it would also provide in some ways a technically
11 superior proposal because it would, it would allow white and
12 gray area service, distinguishing factors of, of significant
13 importance in the Agency --

14 JUDGE CHACHKIN: Apparently, apparently Trinity
15 rejected the site for some reason, although it --

16 MR. MAY: Well, there's, there's nothing in this
17 record that suggests Trinity addressed the site. Now, you may
18 ask Mr. Budd when he comes. When, when he comes you may ask
19 Mr. Budd the reasons why. And he's here. He'll be a witness
20 here that you can go ahead and cross-examine on those issues.
21 But as far as creating the full record and the facts and
22 circumstances in the matter, we think it's relevant.

23 MR. COHEN: Your Honor, there's going to be no
24 dispute that Trinity chose to leave that site. I mean, that
25 -- you could take official notice of that. We've got the

1 papers here. We've got all the papers. They, they left that
2 site. I mean -- and Mr. Budd, who's going to be examined if
3 you permit this, was the sole stockholder, director -- and
4 director and officer of Monroe Television, which was the
5 company that Trinity bought the Construction Permit from. And
6 when Monroe received its Construction Permit, it was proposing
7 the WFOX site. But Trinity would never buy the, the site and
8 would never have bought the, the, the CP if they didn't think
9 they could move to another site. And, so, they spent some-
10 thing like \$600,000 in order to leave the WFOX site. And now
11 they're trying to persuade you that that's a more desirable
12 site and that somehow you should hold my client to a higher
13 standard than Trinity's been held to, and you've already ruled
14 in disposing of the Motions for Summary Judgment you're not
15 going to do that.

16 MR. ZAUNER: Your, Your Honor, we agree with what
17 Your Honor said, and, and that is essentially that there is
18 nothing in this testimony that rebuts anything in any of
19 Glendale's exhibits and that therefore its, its just not
20 relevant. We, we're getting into a collateral matter here,
21 trying an issue concerning a site which nobody is proposing
22 and in a situation where the applicant does not even claim
23 that no shortspacing sites exist.

24 MR. MAY: Yeah, but -- yeah, but the, the fact
25 that --

1 MR. ZAUNER: And, furthermore, why Trinity may not
2 have chosen to use that site has nothing to do with whether a
3 waiver here should be granted to Glendale.

4 MR. MAY: We would just repeat our arguments, Your
5 Honor, that without establishing the facts and circumstances
6 that there are sites, and when you're -- what those available
7 sites are to meet the spacing requirements, you, you can't
8 give a, a contextual weighing of the criteria that Glendale
9 has offered to support its waiver requests.

10 MR. ZAUNER: But no one here is claiming that, that
11 those sites don't exist.

12 MR. MAY: Well, if, if -- may I address --

13 JUDGE CHACHKIN: Yes. Yes.

14 MR. MAY: -- Mr. Zauner?

15 JUDGE CHACHKIN: I think, I think I want you to
16 address that --

17 MR. MAY: Okay.

18 JUDGE CHACHKIN: -- because --

19 MR. MAY: The, the, the issue of whether, for
20 example, an equivalent, equivalent protection being provided
21 by Glendale is a public interest consideration that should be
22 looked at to support their waiver requests has no relevance
23 when you realize that there is in fact a fully spaced site.

24 MR. ZAUNER: Could I answer that at that point --

25 JUDGE CHACHKIN: Yes. Go ahead.

1 MR. ZAUNER: -- going on to a number of arguments?
2 It would, it would seem to me that if the evidence is that
3 Glendale never looked for a conforming site that that would be
4 sufficient then to rebut the equal protection argument stand-
5 ing by itself, that you don't then need to go show on top of
6 that that there is a conforming site.

7 JUDGE CHACHKIN: But doesn't Glendale make the
8 argument that there isn't -- any other site would make no
9 difference? It wouldn't, wouldn't be able to provide the same
10 -- the same problem with equivalent protection would exist?

11 MR. ZAUNER: Do they? If, if they're --

12 JUDGE CHACHKIN: I thought they did.

13 MR. ZAUNER: -- putting it in as specific --

14 JUDGE CHACHKIN: In Mullaney's testimony I thought
15 he made some argument like that. I just quickly glanced at
16 it.

17 MR. COHEN: You wish to hear, you wish to hear from
18 us on that point, Your Honor?

19 JUDGE CHACHKIN: Well, I -- what I'm referring to
20 is, "A grant of Glendale's application would not materially
21 reduce the area with which an applicant for the Montgomery
22 channel could locate a site."

23 MR. COHEN: That that's --

24 MR. ZAUNER: Your Honor, like a true statement, and
25 that would be true --

1 JUDGE CHACHKIN: "A denial would not appreciably
2 increase the available area within which Montgomery applicant
3 could (sic)..." -- such -- "...still have to protect the WHSG-
4 TV site." Now, as I understand here --

5 MR. ZAUNER: Where are you reading from, Your Honor?

6 JUDGE CHACHKIN: I'm reading from page 8, and, and I
7 must say I'm just -- I mean, I haven't read it thoroughly in
8 the last minute or two, the last couple of days. So -- but
9 I'm trying to understand -- there is a claim here that a
10 waiver should be granted. And is the claim made that the
11 waiver should be granted -- if I recall your arguments were --
12 your argument was that the fact that there was greater short-
13 spacing -- because your site is not identical, obviously, to
14 Trinity's site.

15 MR. COHEN: .26 kilometers.

16 JUDGE CHACHKIN: That's right. And you're saying
17 that made no difference. That was substantially similar --

18 MR. COHEN: That was de minimis.

19 JUDGE CHACHKIN: De minimis. That was your
20 argument?

21 MR. COHEN: Yes, sir.

22 JUDGE CHACHKIN: And I rejected your request for
23 summary decision?

24 MR. COHEN: Yes, sir.

25 JUDGE CHACHKIN: All right.

1 MR. COHEN: But you -- in rejecting it, you -- in
2 rejecting --

3 JUDGE CHACHKIN: I also rejected --

4 MR. COHEN: -- both, both motions --

5 JUDGE CHACHKIN: -- a counter --

6 MR. COHEN: You said, you said that you agreed with
7 Glendale's analysis of the law, to wit, that Glendale should
8 not be treated any differently than Trinity.

9 JUDGE CHACHKIN: I agreed with -- I said that if,
10 if, if Glendale was proposing the identical site of Trinity I
11 agreed with you, that the law was they should not be, be
12 treated adversely, treated differently.

13 MR. COHEN: And you --

14 JUDGE CHACHKIN: But I did say the fact that you
15 were not proposing the same site --

16 MR. COHEN: Exactly.

17 JUDGE CHACHKIN: -- regardless of the difference of
18 shortspace -- was, was maybe very little. You had additional
19 shortspacing. Still, it was not the identical site and there-
20 fore by denying you a waiver you are not being treated ad-
21 versely to --

22 MR. COHEN: Well, you -- what you stated --

23 JUDGE CHACHKIN: I said you can come forward with
24 your arguments.

25 MR. COHEN: Exactly.

1 JUDGE CHACHKIN: But I -- all right.

2 MR. COHEN: And the arguments that, that, that our
3 client made are set forth in Mullaney -- Mr. Mullaney's testi-
4 mony and in Mr. Gardner's testimony and in Mr. Daly's testimo-
5 ny and in Mr. --

6 JUDGE CHACHKIN: All right.

7 MR. COHEN: -- Allen's testimony.

8 JUDGE CHACHKIN: Well --

9 MR. COHEN: I mean, we're prepared to, to rest, Your
10 Honor --

11 JUDGE CHACHKIN: I understand, but --

12 MR. COHEN: -- on that.

13 JUDGE CHACHKIN: -- briefly tell me, summarize for
14 me what the arguments are that you're making why you --

15 MR. COHEN: Very well. I think that --

16 JUDGE CHACHKIN: -- should be entitled, why you
17 should be entitled to a waiver.

18 MR. COHEN: I think Mr. Schauble can do that quicker
19 than I can.

20 JUDGE CHACHKIN: All right. Because before I rule
21 on this, I want to see what --

22 MR. COHEN: I understand.

23 JUDGE CHACHKIN: -- your arguments are -- or this is
24 proper rebuttal.

25 MR. COHEN: I think the point is well-taken. And

1 Mr. Schauble, with your permission, should address that.

2 JUDGE CHACHKIN: All right. I have no problem.

3 MR. SCHAUBLE: Your, Your Honor, it basically comes
4 down to about four, four major points. First, the argument
5 that this is de minimis, that this is only a .26 kilometer --

6 JUDGE CHACHKIN: Well --

7 MR. SCHAUBLE: -- showing. The, the second is that
8 we ended up where we were in order to accommodate the FAA and
9 that the Commission in several, several shortspacing cases has
10 recognized the benefits of accommodating aeronautical safety.
11 And to give some background, Your Honor, our, our original
12 site was less shortspaced than --

13 JUDGE CHACHKIN: Let -- your point --

14 MR. SCHAUBLE: -- Trinity.

15 JUDGE CHACHKIN: All right. Let me, let me ask you,
16 the site that, that's being proposed here, would that also
17 satisfy the FAA or would that raise problems with the FAA?

18 MR. COHEN: We have FAA clearance from this site.

19 JUDGE CHACHKIN: No, I'm not talking about this
20 site. I'm talking about the site that's being argued here by
21 Mr. Mullinax.

22 MR. MAY: The WFOX site is an existing tower with --

23 JUDGE CHACHKIN: It's an existing site --

24 MR. MAY: -- with FAA approval.

25 JUDGE CHACHKIN: Existing tower. So, it wouldn't

1 present any FAA problem. All right.

2 MR. MAY: Not to my knowledge.

3 JUDGE CHACHKIN: Go ahead.

4 MR. SCHAUBLE: Okay.

5 MR. MAY: For zoning or environmental --

6 JUDGE CHACHKIN: All right. What's your other
7 argument?

8 MR. SCHAUBLE: The third, third point, Your Honor,
9 is that we would provide protection equivalent to a fully
10 spaced site.

11 JUDGE CHACHKIN: What do you mean by that?

12 MR. SCHAUBLE: That we would -- that the, the
13 Commission, the Commission has recognized that if you're not
14 going to provide any more interference than a fully spaced
15 site that you're -- that there's a public interest factor in
16 support of the waiver. And there, there's engineering testi-
17 mony from Mr. Mullaney on this point.

18 JUDGE CHACHKIN: All right.

19 MR. SCHAUBLE: And the fourth point, Your Honor, is
20 -- which the Commission has also recognized, that there, there
21 is a large area within which somebody for the Channel 63,
22 Montgomery, allocation could apply for even if Glendale's
23 application is granted, as a matter -- that would not change
24 the existing situation because anybody who applied for that
25 channel now would have to apply -- would have to protect the

1 existing Trinity facilities. If you assume a relatively
2 modest facility -- the area is 517 square kilometers -- if you
3 propose full -- maximum facilities permitted by the
4 Commission, the are increases up to 1,800 square kilometers.

5 MR. COHEN: And those are the public interest
6 criteria and arguments that Glendale is making as to why the
7 shortspacing should be waived, Your Honor?

8 JUDGE CHACHKIN: All right. Now, would you, would
9 you concede that there is another site available which would
10 meet the concerns of the FAA and also zoning --

11 MR. COHEN: No.

12 JUDGE CHACHKIN: -- zoning problems?

13 MR. COHEN: No. And --

14 JUDGE CHACHKIN: Well --

15 MR. COHEN: And I would suggest to Your Honor that
16 if you permit Mr. Mullinax to testify there's going to be no
17 evidence in this record that such a site is in fact available.
18 Assuming that that's relevant. We don't think Mr. Mullinax's
19 testimony stands for that proposition, nor does Mr. Budd. And
20 Kevin Fisher's testimony assumes a site is available.

21 JUDGE CHACHKIN: Well, what's the Bureau position?

22 MR. MAY: Well --

23 JUDGE CHACHKIN: Do you have any evidence that --
24 it's an existing site, so I presume the FAA has given its
25 approval.

1 MR. COHEN: We're not -- I'm not challenging that,
2 Your Honor.

3 JUDGE CHACHKIN: All right.

4 MR. COHEN: I am, I am challenging the proposition
5 that the site is in fact available to my client. There is no
6 evidence in my judgment that's before you that's competent to
7 establish that. Randy Mullinax's testimony on it's own -- on
8 the face of it does not establish that.

9 JUDGE CHACHKIN: And your, your argument is going to
10 be -- the testimony you're presenting is that the site is
11 available and the site would be -- could be used and it would
12 satisfy all the Commission's criteria, is that --

13 MR. MAY: Yes, sir. I would like an opportunity to
14 address at least in a general fashion the four points that Mr.
15 Schauble made. I mean, if the first issue was a de minimis
16 increase, I think in your order on September 10, '93, FCC
17 93-M577, you dispensed with that argument very quickly and
18 indicated that they had a -- they had misread the meaning of
19 the de minimis, the de minimis policy by noting that de
20 minimis does not apply in a case where you're talking about a
21 shortspacing of 18.4 kilometers. It's not an issue to be
22 determined as to how much you're increasing the shortspacing;
23 it's the total shortspacing that's involved.

24 I'd also note that the argument was essentially made
25 in Glendale's March 5, '93, amendment moving to this new site

1 that it was a de minimis increase in the shortspacing and that
2 was in front of the Agency that had issued the Hearing
3 Designation Order. Glendale did not seek any reconsideration
4 of the Hearing Designation Order or otherwise contest it in
5 any way. And under Atlantic Broadcasting, I think that's
6 essentially the, the rule of the case, if you will. If
7 they're seeking reconsideration now, it certainly is grossly
8 out of time and --

9 MR. COHEN: That's --

10 MR. MAY: -- wouldn't otherwise be supported --

11 MR. COHEN: -- that's not -- that's --

12 MR. MAY: -- Your Honor, and I think --

13 MR. COHEN: That's, that's sort of --

14 MR. MAY: The second argument --

15 MR. COHEN: -- preposterous to suggest that, that
16 we're --

17 MR. MAY: That's what he said.

18 MR. COHEN: -- seeking reconsideration.

19 MR. MAY: He said de minimis.

20 MR. SCHAUBLE: Your, Your Honor, there was no, there
21 was no analysis of the -- of Glendale's arguments whatsoever
22 in the Hearing Designation Order.

23 JUDGE CHACHKIN: All, all right. What -- go --

24 MR. MAY: You have --

25 JUDGE CHACHKIN: Go on.

1 MR. MAY: You have to presume that they had it,
2 because your exhibit indicated that it would be de minimis.

3 JUDGE CHACHKIN: Go ahead.

4 MR. MAY: The, the second point that they ended up
5 about ended up to accommodate the FAA, when we're talking
6 about existing site, in this case the WFOX site, certainly
7 that would, would meet the requirements of the FAA. It has
8 also been brought out on stipulations that have already been
9 agreed to, for example, the one involving Mr. Gardner and Mr.
10 John Allen, Glendale's aeronautical consultant and expert on
11 this, that they never evaluated any other sites to present to
12 the FAA. The only two sites that they ever presented to the
13 FAA for consideration or approval were their first site and
14 their second site. And, so, for them to essentially argue
15 that, gee, we moved over here in order to accommodate the FAA,
16 it's really a little bit of make way pleading, to the extent
17 that -- well, okay. I made that point.

18 JUDGE CHACHKIN: Well, I, I've heard enough that I,
19 I'm, I'm disposed to allow them the testimony and we'll have a
20 full record, and then all the arguments could be made and --
21 so, I'll allow it. We'll see what rebuttal showing you make
22 and -- do you have any other objections to the -- Mr.
23 Mullinax's testimony?

24 MR. ZAUNER: You're going to hear from Mullinax --

25 JUDGE CHACHKIN: You could, you could -- of course,

1 you'll have an opportunity to cross-examine him or voir dire
2 or whatever.

3 MR. SCHAUBLE: Your Honor --

4 JUDGE CHACHKIN: But I will permit, permit them to
5 present the fact that there is another site available which
6 would meet all the Commission criteria and would avoid short-
7 spacing.

8 MR. ZAUNER: And, and this will conclude -- it will
9 be just this one side. If they find that for some reason this
10 site is not available, they're not going to be allowed to come
11 back and --

12 JUDGE CHACHKIN: Oh, no. No. This is they're --

13 MR. ZAUNER: -- find a showing of still another
14 site --

15 JUDGE CHACHKIN: No, no, no --

16 MR. ZAUNER: -- site --

17 JUDGE CHACHKIN: This is, this is their rebuttal
18 showing and they can't -- certainly can't have full opportuni-
19 ty, if they wanted, to make testimony about other existing
20 sites. We'll rest on this additional site.

21 MR. MAY: That's what -- I mean, counsel for
22 Glendale has conceded they didn't make the threshold showing
23 they'd been looking for fully spaced sites for examining
24 otherwise. We're trying to -- we're presenting this, this one
25 instance so that it gives context to the circumstances in this

1 case, that when we look at things like equivalent protection
2 it's not really a valuable argument because there are fully
3 spaced sites that are --

4 JUDGE CHACHKIN: And I'm going to let you make your
5 showing. So, Mr. Mullinax will be a witness and he will
6 testify. And do you want me to reserve a ruling before you
7 have a chance to -- if you want to ask him any qualifying
8 questions or, or what?

9 MR. COHEN: Well, Your Honor, I, I reflected on, on
10 what you're just suggesting as to whether the question should
11 be asked on voir dire or on cross-examination. I would be
12 prepared to, to go forward and cross-examine with the -- as
13 long as you gave -- give me the opportunity to move to strike
14 if, if the cross-examination establishes a basis for striking
15 the testimony. If you --

16 JUDGE CHACHKIN: All right.

17 MR. COHEN: -- prefer I, I, of course, would proceed
18 on the voir dire.

19 JUDGE CHACHKIN: No, we'll --

20 MR. COHEN: I think it would -- it's a little bit
21 awkward.

22 JUDGE CHACHKIN: All right. We will go -- I, I will
23 -- obviously, if you can demonstrate to me that the -- based
24 on his testimony that exhibit or, or portions of it should be
25 stricken, you will be afforded an opportunity and I will

1 reconsider it if I think it's appropriate. But I will receive
2 Trinity Exhibit 34.

3 (Whereupon, the document marked for
4 identification as Trinity Exhibit
5 No. 34 was received into evidence.)

6 JUDGE CHACHKIN: And 35, is there any objection to
7 that?

8 MR. SCHAUBLE: Yeah, Your Honor. I, I only have --
9 I mean, the general objection is on, on the same lines. I do
10 have one specific objection to the exhibit.

11 JUDGE CHACHKIN: And what is that?

12 MR. SCHAUBLE: Paragraph three, the last sentence I
13 object to on, on the basis of relevance. We're not trying
14 Trinity's qualifications here. I think what's relevant was
15 at, at the time Glendale filed its application.

16 JUDGE CHACHKIN: Any comments, Mr. May?

17 MR. MAY: Am I correct? You're saying the sentence
18 in the -- the last sentence in paragraph three which says,
19 "For this reason a waiver of the station rules was needed to
20 process the grant and grant MTI's application for the current
21 site used by WHSG?

22 MR. SCHAUBLE: That is correct.

23 MR. MAY: That's the one you're objecting to?

24 MR. SCHAUBLE: Yes. Yeah.

25 MR. MAY: And the basis is relevance?

1 MR. SCHAUBLE: Yes, Your Honor.

2 MR. MAY: Well, I, I think it is relevant, Your
3 Honor, to the extent that we just heard Glendale present an
4 argument that says because WHSG-TV is now shortspaced, in
5 order to be treated with equal parity they should be allowed
6 to have the site they specified, and this makes it clear that
7 indeed the rules that apply to them were fully complying with
8 the spacing rules and I think therefore it is relevant.

9 MR. SCHAUBLE: Your Honor, what is -- we think under
10 Easy Communications, Inc., and Royce International
11 Broadcasting what's relevant is not what happened when they
12 first moved to the site but the site the competing -- that the
13 challenging application has filed. Therefore, I respectfully
14 submit Trinity's -- Trinity's argument does not establish the
15 relevance of that.

16 JUDGE CHACHKIN: Well, I'm, I'm not sure I under-
17 stand what you're saying, Mr. Schauble. Are you saying it's
18 not relevant because it's when they first got the grant or
19 what? I, I don't really quite understand what you're saying.

20 MR. SCHAUBLE: We think what, what's relevant --
21 yeah. That is basically it, Your Honor, that it's -- that,
22 that the relevant point is that Trinity was shortspaced at the
23 time Glendale filed its application, not as to what the situa-
24 tion -- not the fact that no waiver was required, not what
25 Trinity's qualifications were at the time.

1 JUDGE CHACHKIN: What is the Bureau's point of view
2 on this? This is the same as --

3 MR. ZAUNER: My, my, my problem is I don't under-
4 stand why this is being offered.

5 JUDGE CHACHKIN: I don't understand either why it's
6 being offered. That's one of my difficulties. Why, why is
7 this being offered, this -- it's to show what?

8 MR. MAY: To have into the record the actual cir-
9 cumstances that applied when WHSG moved to the current site.
10 It is clear that they got no waiver of the shortspacing rules,
11 that they fully complied with the, with the spacing require-
12 ments at the time. We think that's relevant, under the argu-
13 ments Glendale has made, that they are entitled to parity and
14 then they site Easy and Royce for that proposition. We don't
15 think those cases support that proposition. But we, we think
16 that the, the facts as they existed when WHSG moved are impor-
17 tant and relevant to show that there is no parity treatment
18 here. In fact, Glendale is seeking a preferential treatment.

19 JUDGE CHACHKIN: Well, I'm going to strike that.
20 I'm, I'm -- I --

21 MR. COHEN: What, what are you striking, Your Honor?

22 JUDGE CHACHKIN: I'm striking the last sentence. I
23 don't think that's relevant, the fact -- what the situation
24 was at that time. As I've indicated, that if Glendale had
25 proposed the exact same site with the same shortspacing, I

1 would have granted their Motion for Summary Decision, but
2 they're not proposing that and that's why I didn't grant the
3 Motion for Summary Decision. So, I don't, I don't see how
4 this is relevant. All right. I will receive, with the excep-
5 tion of the portion I've rejected, Glendale -- I mean, Trinity
6 Exhibit 35 is received.

7 (Whereupon, the document marked for
8 identification as Trinity Exhibit
9 No. 35 was received into evidence
10 subject to the Judge's rulings made
11 hereto.)

12 MR. ZAUNER: Excuse me, Your Honor. Could you just
13 state again what portion of 35 --

14 JUDGE CHACHKIN: The only thing I'm --

15 MR. ZAUNER: -- was struck?

16 JUDGE CHACHKIN: -- rejecting is that one sentence,
17 "For this reason..." in paragraph three. All right. Then we
18 have one more exhibit before we take lunch, and that's 36.

19 MR. SCHAUBLE: Yes, Your Honor. Object to --

20 JUDGE CHACHKIN: Thirty-six is a separate exhibit?

21 MR. SCHAUBLE: Yes, Your Honor.

22 MR. MAY: Your Honor -- it is, Your Honor.

23 JUDGE CHACHKIN: Well, I have it. Okay. Yes. Any
24 objection to 36?

25 MR. SCHAUBLE: Yes, Your Honor. Para-- on pages 1

1 and 2, paragraph 3 and 4, and tab A. I object on the basis
2 that I don't think this, this portion was prepared consistent
3 with Commission policy. This makes no reference to -- this is
4 essentially an argument concerning where Glendale, where
5 Glendale's specified site. It makes no reference to -- if you
6 look at tab A, there's no reference to the fact that WHSG is
7 in the shortspaced area. And we think this is sort of an
8 extension of the -- an argument which Your Honor rejected,
9 that Your Honor mentioned if Glendale had been at the same, at
10 the same site at the same distance Your Honor would have
11 granted the Motion for Summary Decision. And we, and we think
12 the -- this information is inconsistent with Commission policy
13 as expressed in your, your order and your rulings.

14 JUDGE CHACHKIN: I, I don't quite understand what
15 your argument is. How, how is this inconsistent with my
16 ruling?

17 MR. SCHAUBLE: Your Honor, as I stand -- as I
18 understand Mr. Fisher's argument, he's saying that Trinity --
19 that Trinity is allowed to be at its current site but that
20 Glendale would not -- that if, that if Glendale specified that
21 site Glendale would not be allowed to be at that site, that
22 Glendale would have to move, move back from where Trinity is
23 currently operating. Does -- if you look at tab A, which is
24 the map, there's no reference whatsoever to the fact that --
25 to the -- there's no reference to where -- showing of where